

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

NOV 12 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

| | | |
|-----------------------|---|----------------------------|
| THE STATE OF ARIZONA, |) | 2 CA-CR 2010-0251-PR |
| |) | DEPARTMENT B |
| Respondent, |) | |
| |) | <u>MEMORANDUM DECISION</u> |
| v. |) | Not for Publication |
| |) | Rule 111, Rules of |
| MANUEL SANCHEZ, |) | the Supreme Court |
| |) | |
| Petitioner. |) | |
| _____ |) | |

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20074435

Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Barton & Storts, P.C.
By Brick P. Storts III

Tucson
Attorneys for Petitioner

ECKERSTROM, Judge.

¶1 Following a jury trial, petitioner Manuel Sanchez was convicted of transporting marijuana for sale. The trial court sentenced him to a mitigated seven-year prison term. We affirmed Sanchez's conviction and sentence on appeal. *State v. Sanchez*, No. 2 CA-CR 2008-0302 (memorandum decision filed June 2, 2009). Sanchez then filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., in

which he claimed that he was entitled to relief under Rule 32.1(h) because there was insufficient evidence to support his conviction and that trial counsel had been ineffective in presenting this issue at trial. The court denied relief without conducting an evidentiary hearing, and this petition for review, in which Sanchez asks us to vacate his conviction and dismiss his case with prejudice, followed. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no abuse here.

¶2 As the sole issue he raises on review, Sanchez claims the trial court abused its discretion by finding he had failed to show by clear and convincing evidence that the facts underlying the claim were sufficient to establish that no reasonable fact-finder would have found him guilty beyond a reasonable doubt. *See* Ariz. R. Crim. P. 32.1(h). Sanchez specifically asserts there was insufficient evidence that he had knowingly transported marijuana for sale, a necessary element under A.R.S. § 13-3405(A)(4).

¶3 The following facts are relevant to Sanchez’s claim. In November 2007, a border patrol agent stopped the vehicle Sanchez was driving on Arivaca Road outside of Tucson and found nine burlap-wrapped bales of marijuana weighing approximately 358 pounds in the rear portion of the vehicle. The agent detected the smell of marijuana as he stood “right by the brake lights, [at] the rear end of the vehicle.” At trial, Sanchez testified he had picked up a hitchhiker who had loaded items into the rear portion of his vehicle; he claimed he was unaware the items contained marijuana. Viewing the evidence in the light most favorable to the state as we must, we agree with the trial court that a jury could reasonably infer that Sanchez, sitting in the interior of the sport utility

vehicle, would have also smelled the aroma of marijuana. Nor would the jury have been required to credit Sanchez's testimony suggesting that he had innocently picked up a hitchhiker, near the border, toting several hundred pounds of burlap bags that emitted such an aroma.

¶4 The trial court articulated its full ruling in a detailed and thorough minute entry order that clearly identified Sanchez's argument and will allow any future court to understand its resolution. We therefore approve and adopt the court's ruling and see no need to reiterate it in any further detail. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Because we conclude the court did not abuse its discretion by denying post-conviction relief, we grant the petition for review but deny relief.

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Judge

CONCURRING:

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge